



**STATE SENATOR NAN RICH
LEGISLATIVE UPDATE
NOVEMBER 2011**

**COURTS PROVIDE IMPORTANT CHECK WHEN LEGISLATURE
PASSES LAWS INFRINGING ON CONSTITUTIONAL FREEDOMS**

This past summer, I wrote about a number of laws that the legislature passed that violated either federal law or the Florida or U.S. Constitutions. The laws, relating to issues ranging from voting to privacy to the doctor-patient relationship, were passed despite my strong opposition – and that of most of my Democratic colleagues. Over the past few months, individuals and civil rights organizations have filed lawsuits challenging the laws, and I wanted to update you on the progress of some of these court cases.

Elections

The legislature passed HB 1355 which makes numerous changes to Florida's election laws, and is part of a nation-wide effort at voter suppression heading into the 2012 elections. The bill reduces the time period for early voting, ends the practice of allowing voters who have moved from one county to another to change their address on Election Day, places onerous regulations on voter registration groups (like the League of Women Voters) and makes it more difficult for citizen groups to gather signatures for proposed ballot initiatives. Two Florida teachers – one in Daytona Beach and another in Pensacola have gotten into trouble with the law for helping their students register, but not turning in the registration forms within the required 48 hour time limit.

Because there are five counties in Florida that have a history of suppressing voting by African Americans, the Voting Rights Act of 1965 requires any changes to Florida's election law be approved by the U.S. Department of Justice before it can be implemented in those counties (Collier, Hardee, Hendry, Hillsborough and Monroe). The American Civil Liberties Union (ACLU) and Project Vote brought a lawsuit in federal court to delay the law from going into effect across the rest of the state until the Justice Department makes its decision.

Unfortunately, the U.S. District Court ruled that the law could go into effect in all but the five counties “covered” by the Voting Rights Act. This means that until the Justice Department determines whether HB 1355 complies with the Voting Rights Act, Florida will actually have two different elections procedures – the old laws will remain in force in those five counties, while the provisions of HB 1355 will go into effect in the rest of the state. We remain hopeful the Justice Department will recognize the problems with the new law, and deny approval for it. This would then set up an opportunity for another lawsuit to have the law thrown out in the rest of the state.

Doctor-Patient Relationship

The legislature also passed a very short-sighted and dangerous law that would have limited what doctors can ask their patients about their gun ownership. (Doctors ask these questions of their patients in order to discuss gun safety issues, particularly pediatricians trying to ensure parents who own guns are careful to keep their guns locked and away from children.) A group of Florida doctors and the Brady Center to Prevent Gun Violence brought a lawsuit earlier this year, claiming that the so-called “Docs & Glocks” bill violated the Free Speech protections in the First Amendment.

The federal court has blocked the law from being enforced while the case is pending. Usually, when courts take this action, it is because it appears the lawsuit is likely to be successful, and I am confident that, ultimately, the law will be stricken. Doctors have a right to speak freely with their patients, and patients have the right to expect their doctors to provide them with honest, accurate information to protect their own and their family’s health and safety.

Privacy for Public Employees and Needy Families

Federal courts have also blocked the implementation of laws to require random drug testing of state workers and applicants for Temporary Assistance to Needy Families (TANF). Of course, everyone agrees with the goal of reducing illegal drug use, but the privacy provisions in the Florida Constitution and the protections from suspicionless searches in the U.S. Constitution apply to everyone – people cannot be forced to surrender those rights simply because they go to work for the government or fall on hard financial times.

Prison Privatization

Finally, a state appellate court has stopped the Department of Corrections from going forward with the privatization of prisons in South Florida, because of the way the legislature passed the plan. Instead of proposing a separate bill to privatize prisons, the legislature tucked the privatization language into the budget bill – which is more than 400 pages long. Legislators didn’t have the ability to debate or cast an up-or-down vote on just the privatization plan – if they wanted to vote against it, they would have had to vote against the whole budget. The Florida Constitution prohibits the legislature from putting policy changes like this into the budget, and the Court rightly stopped the implementation of this unconstitutionally passed plan.

While it is troubling to me that the legislature would even pass such constitutionally suspect laws in the first place, it is reassuring to know that the courts are there to provide the appropriate checks and balances that serve to keep any one branch of government from overreaching its authority.

As always, I appreciate the opportunity to serve as your State Senator. If you have any comments or questions on any issue related to Florida government, please feel free to contact my office at (954) 747-7933 or email at rich.nan.web@flsenate.gov.